

1 E. Upon written request by a Settling Work Defendant's
2 Project Coordinator to EPA at least fourteen (14) days prior to a
3 sampling event, EPA will provide to that Settling Work Defendant
4 a split or duplicate sample of any sample collected by EPA or on
5 its behalf for purposes of implementing this Consent Decree and
6 the analytical results obtained from the sample. If EPA collects
7 any samples pursuant to the Statement of Work or undertakes any
8 other Work pursuant to the Statement of Work, EPA will attempt to
9 notify the Settling Work Defendants' Project Coordinators at
10 least fourteen (14) days in advance and permit Settling Work
11 Defendants or their representatives to observe such Work;
12 provided, however, that any failure by EPA to notify Settling
13 Work Defendants pursuant to this Subpart shall not be deemed a
14 violation of this Decree.

15 F. Each Settling Work Defendant reserves the right to
16 assert that documents and other information that it submits to
17 EPA are entitled to confidential treatment pursuant to Section
18 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). For each such
19 claim, the Settling Work Defendant submitting the information
20 shall clearly mark each document as confidential and provide each
21 such document to EPA. Any such claims shall be subject to EPA's
22 confidentiality determination procedure pursuant to 40 C.F.R.
23 Part 2. If a Settling Work Defendant does not make a confiden-
24 tiality claim pursuant to CERCLA Section 104(e)(7), 42 U.S.C. §
25 9604(e)(7), at the time it submits information to EPA, such in-
26 formation may be made available to the public without any notice
27 to the Settling Work Defendant.

1 G. The information gathering abilities provided pursuant to
2 this Section are in addition to, and not in lieu of, any rights
3 of information gathering granted to EPA by statute.

4 H.1. Lockheed shall provide the following data to the City
5 at the same time that Lockheed is required to provide such infor-
6 mation to EPA:

7 a. Analytical sampling results received by Lockheed or
8 its representatives on extraction wells supplying water to the
9 groundwater Treatment Plant;

10 b. Analytical sampling results on groundwater Treat-
11 ment Plant influent, effluent and internal intermediate processes
12 taken by Lockheed or its representatives.

13 2. Lockheed shall provide the following information to the
14 City within sixty (60) days of receipt of a written request from
15 the City:

16 a. All groundwater Treatment Plant operating logs and
17 summary management reports;

18 b. All reports and study results generated by Lockheed
19 or its representatives pertaining to groundwater Treatment Plant
20 efficiency or operations;

21 c. Any other information that Lockheed is required to
22 submit to EPA pursuant to this Section for which Lockheed does
23 not claim confidentiality pursuant to Section 104(e)(7), 42
24 U.S.C. § 9604(e)(7).

1 I.1. The City shall provide to Lockheed, at the same time
2 that the City is required to provide such information to EPA,
3 analytical sampling results on blending facility influents, ef-
4 fluent and internal intermediate processes taken by the City or
5 its representatives.

6 2. The City shall provide to Lockheed, within sixty (60)
7 days of a written request from Lockheed, any other information
8 that the City is required to submit to EPA pursuant to this Sec-
9 tion for which the City does not claim confidentiality pursuant
10 to Section 104(e)(7), 42 U.S.C. § 9604(e)(7).

11 3. Twenty days after the end of each month in which the
12 City draws upon the Lockheed Trust Fund account established pur-
13 suant to Subpart H of Section XII (Financial Assurance and Trust
14 Accounts), the City shall provide to Lockheed copies of the con-
15 tractor invoices and documentation of internal expenses for any
16 costs incurred by the City during the prior month which the draw
17 from the Lockheed Trust Fund was intended to reimburse.

18 XII. FINANCIAL ASSURANCE AND TRUST ACCOUNTS

19 A.1. Subject to the provisions of Subpart C of this Sec-
20 tion, Lockheed shall demonstrate its ability to complete the Work
21 and to pay all costs, penalties and interest for which Lockheed
22 is or may become responsible under this Decree by obtaining, and
23 presenting to EPA for approval within thirty (30) days after the
24 effective date of this Decree, one of the following items for the
25 amount of \$54,000,000.00:

- 26 a. Performance bond,
27 b. Letter of credit, or

1 c. Guarantee by a third party.

2 2. After Lockheed has been operating phase one for 18
3 months, or on the date that EPA approves Lockheed's Remedial Ac-
4 tion Work Plan for phase two, whichever is later, Lockheed may
5 reduce the financial assurance provided pursuant to this Section
6 to the amount of \$37,000,000.00.

7 3. After Lockheed has been operating phase two for 18
8 months, or on the date that EPA approves Lockheed's Remedial Ac-
9 tion Work Plan for phase three, whichever is later, Lockheed may
10 reduce the financial assurance provided pursuant to this Section
11 to the amount of \$23,000,000.00.

12 4. For purposes of this Section, "operation" of any phase
13 shall be deemed to begin on the System Operation Date.

14 B. EPA may disapprove the financial assurance mechanism
15 presented if, in EPA's determination, it does not provide ade-
16 quate assurance that Lockheed is able to complete the Work. If
17 Lockheed seeks to demonstrate its ability to complete the Work
18 through a guarantee by a third party pursuant to Subpart A.3 of
19 this Section, Lockheed shall demonstrate that the guarantor
20 passes the financial test specified in 40 C.F.R. § 265.143(e).
21 In determining whether or not such third party satisfies the
22 criteria in 40 C.F.R. § 265.143(e), the amount required in Sub-
23 part A of this Section shall be used in place of "the sum of the
24 current closure and post-closure cost estimates and the current
25 plugging and abandonment cost estimates," referred to in 40
26 C.F.R. § 265.143(e).

1 C. In lieu of any of the three items listed in Subpart A
2 above, Lockheed may present, for EPA's review and approval, in-
3 ternal or public financial information sufficient to satisfy EPA
4 that Lockheed has sufficient assets to make additional assurances
5 unnecessary. EPA shall approve such financial assurance if EPA
6 determines, based on the information submitted, that Lockheed has
7 met the criteria in 40 C.F.R. § 265.143(e). In determining
8 whether or not Lockheed has met these criteria, the amount re-
9 quired in Subpart A of this Section shall be used in place of
10 "the sum of the current closure and post-closure cost estimates
11 and the current plugging and abandonment cost estimates," as
12 referred to in 40 C.F.R. § 265.143(e). If Lockheed relies on in-
13 ternal or public financial information for financial assurance,
14 Lockheed shall submit such information on an annual basis until
15 this Consent Decree is terminated pursuant to Section XXXIV
16 (Termination and Satisfaction). If EPA determines the financial
17 assurances to be inadequate based on its review of Lockheed's
18 initial submittal or on review of any annual submittal, Lockheed
19 shall obtain one of the three other financial instruments listed
20 above in Subpart A of this Section, within thirty (30) days of
21 receiving notice of such determination. If Lockheed disputes a
22 determination by EPA that any financial assurance provided pur-
23 suant to this Subpart C is inadequate, Lockheed shall maintain
24 one of the three financial instruments listed in Subpart A during
25 the pendency of the dispute.

1 D. Within sixty (60) days of the effective date of this
2 Consent Decree, Weber shall establish a trust fund (the "Weber
3 Trust Fund") in the amount of Three Million Seven Hundred and
4 Fifty Thousand Dollars (\$3,750,000.00). The instrument estab-
5 lishing the Weber Trust Fund (the "Weber trust agreement") shall
6 provide that Lockheed may draw upon the amount in the Weber Trust
7 Fund to pay costs incurred in performing the Work that Lockheed
8 has agreed to perform pursuant to Section VII (Work To Be
9 Performed); provided, however, that if EPA takes over such Work,
10 Lockheed may no longer draw upon the Weber Trust Fund and EPA
11 may, instead, draw upon any amounts remaining in the Weber Trust
12 Fund to reimburse the Superfund for amounts incurred in perform-
13 ing such Work. Weber shall bear all costs related to the estab-
14 lishment and maintenance of the Weber Trust Fund; provided,
15 however, that Weber may use interest earned on the Weber Trust
16 Fund to pay maintenance fees related to the Weber Trust Fund.
17 Any additional interest shall be included in the Weber Trust Fund
18 and drawn upon for performance of the Work by Lockheed or EPA.

19 E. Weber shall submit a signed copy of the Weber trust
20 agreement to EPA and Lockheed within sixty-five (65) days of the
21 effective date of the Consent Decree.

22 F. The Weber trust agreement shall require the trustee to
23 provide a statement of the Weber Trust Fund account to EPA, Weber
24 and Lockheed on the following schedule. The trustee shall submit
25 its initial statement by the tenth day of the first calendar
26 month after the first month in which either Lockheed or EPA draws
27 upon the Weber Trust Fund. A statement shall be submitted to

1 EPA, Weber and Lockheed on the tenth day of the first calendar
2 month after each month in which either Lockheed or EPA draws upon
3 the Weber Trust Fund.

4 G. This Decree does not require Weber to perform any of the
5 Work described in Section VII (Work To Be Performed), including
6 any additions or changes to such Work. Pursuant to this Decree,
7 Weber's sole responsibility for funding such Work is the obliga-
8 tion to establish and fund the Weber Trust Fund described in Sub-
9 parts D through F of this Section. The establishment and funding
10 of such Weber Trust Fund shall entitle Weber to the covenant not
11 to sue under Subpart A.2 of Section XVIII (Covenant Not To Sue).

12 H. Within sixty (60) days of the effective date of this
13 Decree, Lockheed shall establish a trust fund (the "Lockheed
14 Trust Fund" in the amount of Two Hundred Thousand Dollars
15 (\$200,000.00). The instrument establishing the Lockheed Trust
16 Fund (the "Lockheed trust agreement") shall provide that, upon
17 submission to the trustee of an invoice with supporting documen-
18 tation, the City may draw upon the amount in the Lockheed Trust
19 Fund (up to \$200,000.00) to pay only those costs incurred by the
20 City in designing and constructing the facilities necessary to
21 transport treated groundwater from the Point of Delivery to the
22 Valley Forebay Facility and necessary structural modifications
23 and diffuser piping; provided, however, that if EPA takes over
24 such Work, the City may no longer draw upon the Lockheed Trust
25 Fund and EPA may, instead, draw upon any amounts remaining in the
26 Lockheed Trust Fund (up to a total of \$200,00.00 drawn by the
27 City and EPA) to reimburse the Superfund for amounts incurred in

1 performing such Work. Lockheed shall bear all costs related to
2 the establishment and maintenance of the Lockheed Trust Fund and
3 receive any interest that accrues pursuant to the Lockheed trust
4 agreement.

5 I. Lockheed shall submit a signed copy of the Lockheed
6 trust agreement to EPA and the City within sixty-five (65) days
7 of the effective date of this Consent Decree.

8 J. The Lockheed trust agreement shall require the trustee
9 to provide a statement of the Lockheed Trust Fund account to the
10 City, Lockheed and EPA on the following schedule. The trustee
11 shall submit its initial statement by the tenth day of the first
12 calendar month after the first month in which either the City or
13 EPA draws upon the Lockheed Trust Fund. A statement shall be
14 submitted to EPA, the City and Lockheed on the tenth day of the
15 first calendar month after each month in which either the City or
16 EPA draws upon the Lockheed Trust Fund. The Lockheed Trust Fund
17 shall be terminated upon EPA's approval of the City's Interim
18 Remedial Action Report, as defined in the Statement of Work. If
19 any portion of the \$200,000.00 principal remains in the Lockheed
20 Trust Fund at the time of termination, such amount shall be
21 returned to Lockheed.

22 XIII. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

23 A. All actions required to be taken pursuant to this Con-
24 sent Decree shall be undertaken in accordance with the require-
25 ments of all applicable local, state and federal laws and regula-
26 tions, including CERCLA, as amended, and in accordance with the
27 NCP, as amended, and the ROD (as modified by the ESD and Subpart

1 F of Section VII (Work To Be Performed)). Except as provided in
2 Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), Lockheed
3 shall obtain or cause its contractors to obtain all permits and
4 approvals necessary under such laws and regulations for the Work
5 it is required to perform. The City shall obtain or cause its
6 contractors to obtain all permits and approvals necessary under
7 such laws and regulations for the Work it is required to perform.

8 B. Each Settling Work Defendant shall include in all con-
9 tracts or subcontracts into which it enters for the Work, provi-
10 sions stating that the contractors or subcontractors, including
11 their agents and employees, shall perform all activities required
12 by such contracts or subcontracts in compliance with all ap-
13 plicable laws and regulations.

14 C. This Consent Decree is not, nor shall it act as, nor is
15 it intended by the Settling Parties to be, a permit issued pur-
16 suant to any federal, state, or local statute or regulation.

17 D. All permits or other approvals required for the perfor-
18 mance of the Work, including permits for any offsite disposal of
19 hazardous substances, shall be identified in each Settling Work
20 Defendant's Plan(s) for Satisfaction of Permitting Requirements,
21 Final Remedial Design Report(s), and Final Remedial Action Work
22 Plan(s), which are described in the Statement of Work.

23 E. Settling Work Defendants shall dispose of any materials
24 taken off the Site in compliance with all applicable provisions
25 of EPA's Revised Procedures for Implementing Off-Site Response
26 Actions ("Off-Site Policy") (EPA OSWER Directive, 9834.11, Novem-
27 ber 13, 1987).

1 XIV. RETENTION OF RECORDS

2 A. Each Settling Work Defendant shall preserve and retain
3 and shall instruct its contractors, subcontractors, and anyone
4 else acting on its behalf to preserve and retain all records and
5 documents (in the form of originals or exact copies or, in the
6 alternative, in micrographic storage of all originals) in their
7 possession or control developed in the course of performing the
8 Remedial Action Work regardless of any document retention policy
9 to the contrary, for five (5) years after certification of
10 completion of the Work pursuant to Section XXXIV (Termination and
11 Satisfaction). However, at any time during this five-year
12 period, a Settling Work Defendant may deliver to the EPA Project
13 Coordinator originals or copies of all non-privileged records and
14 documents that it is required to preserve and retain under this
15 Subpart A and thereby absolve itself of any further respon-
16 sibility to preserve and retain such non-privileged records and
17 documents. The obligation to preserve and retain any allegedly
18 privileged documents shall remain until the end of the five (5)
19 year period.

20 B. If a Settling Work Defendant asserts a privilege with
21 respect to any document requested by EPA, it shall, upon request
22 by EPA, provide an identification of such document by date,
23 addressee(s) and addressor(s) and the basis for asserting
24 privilege within twenty (20) days of the request by EPA. Set-
25 tling Work Defendants may assert any privilege recognized by
26 federal law. If a Settling Work Defendant decides to deliver to
27 EPA all non-privileged documents pursuant to Subpart A of this

1 Section, that Settling Work Defendant shall also provide to EPA
2 at that time a list of all documents which it is required to
3 preserve and retain pursuant to Subpart A but which it is not
4 turning over based on a claim of privilege. At EPA's request,
5 that Settling Work Defendant shall identify each such document by
6 date, addressee(s), and addressor(s) and shall provide the basis
7 for asserting a privilege within twenty (20) days of the request
8 by EPA. A Settling Work Defendant may assert any privilege
9 recognized by federal law. If EPA disagrees with a Settling Work
10 Defendant's characterization of a document as privileged, EPA may
11 request that that Settling Work Defendant produce the document.
12 The Settling Work Defendant(s) shall either comply with such re-
13 quest or invoke the dispute resolution procedures of Section XX
14 (Dispute Resolution).

15 XV. REIMBURSEMENT OF PAST COSTS

16 A. In full and complete settlement of Lockheed's liability
17 to the United States for all Past Response Costs incurred by the
18 United States with respect to the Site, Lockheed shall reimburse
19 the Superfund in the amount of \$1,958,929.72. Lockheed shall,
20 within thirty (30) days of the effective date of this Consent
21 Decree, remit a certified or cashiers check for such amount to
22 the address listed below:

23 U.S. Environmental Protection Agency, Region IX
24 Superfund Accounting
25 P. O. Box 360863M
Pittsburgh, PA 15251
Attention: Collection Officer for Superfund .

1 B. Lockheed shall send a transmittal letter with the check
2 described in Subpart A of this Section. The transmittal letter
3 shall contain Lockheed's complete and correct address, the
4 Operable Unit name, and the civil action number. Lockheed shall
5 also state in the transmittal letter that \$124,307.44 of the
6 funds are to be applied to site spill identifier ("SSID") #L6 and
7 \$1,834,622.28 of the funds are to be applied to SSID #59.
8 Lockheed shall send a copy of the transmittal letter and a copy
9 of the check to the United States Department of Justice at the
10 address indicated in Section XXIII (Form of Notice). Lockheed
11 shall also send a copy of the check and a copy of the transmittal
12 letter to the EPA Project Coordinator and the EPA Assistant
13 Regional Counsel at the addresses listed in Section XXIII (Form
14 of Notice). If Lockheed does not reimburse the Superfund in the
15 amount specified in Subpart A of this Section within thirty (30)
16 days of the effective date of this Consent Decree, then interest
17 on the unpaid amount shall begin to accrue thirty (30) days after
18 the effective date of this Consent Decree, at the rate specified
19 in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

20 XVI. REIMBURSEMENT OF FUTURE RESPONSE COSTS

21 A. Lockheed agrees to reimburse the United States for any
22 Future Response Costs which the United States (1) incurs in con-
23 nection with the Site prior to the termination of this Consent
24 Decree pursuant to Section XXXIV (Termination and Satisfaction)
25 and (2) submits to Lockheed for payment pursuant to this Section.
26 After this Decree becomes effective, EPA shall submit to
27 Lockheed, no more frequently than annually, documentation of Fu-

1 ture Response Costs incurred by the United States; provided,
2 however, that failure to include all such costs in the submittal
3 during any particular calendar year will not preclude EPA from
4 submitting such costs in any subsequent year. Lockheed does not
5 agree to pay interest on any costs except as specifically
6 provided for in this Decree.

7 B. Interest at the rate specified in Section 107(a) of
8 CERCLA, 42 U.S.C. § 9607(a), shall accrue on any unpaid Future
9 Response Costs beginning thirty (30) days after Lockheed's
10 receipt of EPA documentation with respect to such costs.
11 Lockheed agrees to reimburse the United States for Future
12 Response Costs and any interest due within sixty (60) days of
13 receipt of the documentation for such costs. EPA's documentation
14 with respect to such costs shall consist of (1) an Agency Finan-
15 cial Management System Summary report ("SPUR") or an equivalent
16 report, and (2) to the extent that they are not included in such
17 SPUR or equivalent report (a) a summary of EPA's indirect and in-
18 terest cost calculations and (b) a summary of costs incurred by
19 the Department of Justice; provided, however, that EPA is not re-
20 quired to include in such documentation any interest cost cal-
21 culation for interest which may accrue after Lockheed's receipt
22 of the documentation. EPA shall also state in a cover letter
23 what specific amount of the Future Response Costs in its annual
24 submittal corresponds to each SSID number.

25 C. Payments shall be made by certified check for the amount
26 of costs demanded made payable to the "EPA-Hazardous Substances
27 Superfund." Two separate checks shall be sent if Future Response

1 Costs under both SSID #L6 and SSID #59 are included in EPA's
2 documentation. With each check, Lockheed shall send a transmittal
3 letter which shall include the correct name and address of
4 Lockheed, the applicable site spill identifier number (SSID #L6
5 or #59, as identified in EPA's cover letter), the Operable Unit
6 name, and the civil action number. A copy of each such check and
7 a copy of the transmittal letter shall be sent to the EPA Project
8 Coordinator and to the United States Department of Justice, at
9 the addresses set forth in Section XXIII (Form of Notice).

10 D. Checks should specifically reference the identity of the
11 Site and be sent to:

12 U.S. Environmental Protection Agency
13 Region IX
14 Superfund Accounting
15 P.O. Box 360863M
16 Pittsburgh, PA 15251
17 Attention: Collection Officer for Superfund

18 E. Payments made pursuant to this Section or Section XV
19 (Reimbursement of Past Costs) shall not constitute an admission
20 by Lockheed of any liability to the United States or any other
21 person or entity.

22 XVII. RESERVATION AND WAIVER OF RIGHTS

23 A. The United States reserves the right to take any en-
24 forcement action pursuant to CERCLA and/or any other legal
25 authority, including the right to seek injunctive relief,
26 monetary penalties, and punitive damages, for any civil or
27 criminal violation of law or this Consent Decree, except that the
United States agrees not to seek more than \$25,000 per day per
violation in civil penalties, including stipulated penalties.

1 Except as specifically waived in this Decree, Settling Defen-
2 dants reserve all defenses to any such enforcement action by EPA.
3 Notwithstanding compliance with the terms of this Consent Decree,
4 including completion of the Work, Lockheed is not released from
5 liability for any matters other than Covered Matters and Weber
6 and the City are not released from liability for any matters
7 other than Covered Matters and the tasks described in Subpart B
8 of Section VII (Work To Be Performed).

9 B. Subject to the dispute resolution provisions of Section
10 XX (Dispute Resolution), the United States reserves the right to
11 disapprove of Work performed by a Settling Work Defendant that is
12 not in compliance with this Consent Decree. Subject to the dis-
13 pute resolution provisions of Section XX (Dispute Resolution),
14 the United States also reserves the right to compel a Settling
15 Work Defendant pursuant to this Decree to perform tasks in addi-
16 tion to those detailed in the Statement of Work if such tasks are
17 necessary to meet the requirements that Section VII (Work To Be
18 Performed) imposes upon that Settling Work Defendant.

19 C. The United States reserves the right to undertake
20 remedial design and remedial actions, including operation and
21 maintenance activities (including any operation and maintenance
22 activities which are not part of the Work), at any time and to
23 seek to recover all costs of those actions from Settling Defen-
24 dants; provided, however, that the United States agrees not to
25 attempt to recover the costs of performing the tasks described in
26 Subpart B of Section VII (Work To Be Performed) from the City if
27 the City is in full compliance with the terms of this Decree or

1 from Weber if Weber is in full compliance with the terms of this
2 Decree. The United States agrees not to undertake any part of
3 the Work unless (1) the Settling Work Defendant responsible for
4 that part of the Work fails to perform in an adequate and timely
5 manner any Work for which it is responsible or (2) EPA, pursuant
6 to Subpart D of Section XVIII (Covenant Not To Sue), determines
7 that performance of any additional remedial action tasks related
8 to the Work (including identification of a new or changed ap-
9 plicable or relevant and appropriate requirement pursuant to Sub-
10 part M.2 of Section VII (Work To Be Performed)) are required and
11 Settling Defendants do not agree to perform these additional
12 tasks.

13 D.1. The Settling Parties recognize and acknowledge that
14 the settlement embodied in this Consent Decree may result only in
15 a partial remediation of conditions at the Site and will result
16 only in partial implementation of the ROD (as modified by the ESD
17 and Subpart F of Section VII (Work To Be Performed)). The Set-
18 tling Defendants hereby waive the defenses of res judicata, col-
19 lateral estoppel, and claim-splitting against the United States,
20 but only with respect to the United States' right to pursue sub-
21 sequent action regarding Settling Defendants' responsibility to
22 pay for or perform response actions with respect to groundwater
23 and soil contamination in the San Fernando Valley; provided,
24 however, that this waiver shall not affect the enforceability of
25 the covenants not to sue set forth in Section XVIII (Covenant Not
26 To Sue). The United States hereby retains all of its information
27 gathering and inspection rights and authorities under CERCLA, the

1 Resource Conservation and Recovery Act ("RCRA"), and any other
2 applicable statute or regulation. Except as specifically
3 provided in Section XVIII (Covenant Not To Sue) and Subpart C of
4 this Section, EPA hereby reserves the right to take any addi-
5 tional response actions, including any enforcement action, pur-
6 suant to CERCLA, RCRA, and any other applicable statute or
7 regulation (including the right to take enforcement action seek-
8 ing to have Settling Defendants pay response costs for or perform
9 any response actions that are not Covered Matters (including any
10 tasks necessary to implement the ROD, as modified by the ESD and
11 Subpart F of Section VII (Work To Be Performed), that are not
12 part of the Work).

13 2. The Settling Parties recognize that this Decree does not
14 cover all of the tasks necessary to implement the ROD (as
15 modified by the ESD and Subpart F of Section VII)). EPA
16 presently intends to seek to have these additional tasks per-
17 formed through enforcement actions or judicial settlements with
18 potentially responsible parties ("PRPs"). These PRPs may include
19 the Settling Defendants, pursuant to the reservation of EPA's en-
20 forcement authority in Subparts C and/or D of this Section;
21 provided, however, that the United States agrees not to take an
22 enforcement action for the performance of or to recover the costs
23 of the tasks described in Subpart B of Section VII (Work To Be
24 Performed) against the City if the City is in full compliance
25 with the terms of this Decree or against Weber if Weber is in
26 full compliance with the terms of this Decree.

27

1 E. Settling Defendants reserve any and all defenses or
2 rights they may have with respect to any actions concerning the
3 Site, including any enforcement action by EPA pursuant to Subpart
4 D of this Section, except any rights expressly waived in this
5 Decree. Settling Defendants retain any and all rights, claims,
6 remedies and defenses that they have or may have against any per-
7 son, or entity, including potentially responsible parties, not
8 expressly waived in this Decree, including any rights, claims,
9 remedies and defenses they may have as against each other. This
10 reservation shall not affect each Settling Defendant's obligation
11 to perform its obligations under this Decree, and shall not af-
12 fect EPA's ability to assess stipulated penalties in accordance
13 with Section XIX (Stipulated Penalties).

14 F. Settling Defendants waive any rights they might have to
15 challenge the United States' or the Court's authority to issue,
16 enter into or enforce this Decree.

17 G. Settling Defendants waive any claims for damages or
18 reimbursement from the United States, or for set-off of any pay-
19 ments made or to be made to the United States, arising from or on
20 account of any contract, agreement, or arrangement between
21 Lockheed and/or the City and any person for performance of the
22 Work on or relating to the Site, including claims on account of
23 construction delays; provided, however, that nothing in this Con-
24 sent Decree shall be interpreted as waiving, abrogating or
25 resolving (1) any claims which any Settling Defendant has or may
26 have based upon any alleged liability which the United States
27 Department of Defense, any branch or division thereof, or any

1 predecessor agency has or may have for conditions at the Site
2 pursuant to CERCLA Sections 106, 107, 113, 120 or 310, 42 U.S.C.
3 §§ 9606, 9607, 9613, 9620, or 9659 or the Resource Conservation
4 and Recovery Act ("RCRA") Section 7002, 42 U.S.C. § 6972 or (2)
5 any claims which Lockheed or Weber have or may have with respect
6 to the Site pursuant to any contract between Lockheed or Weber
7 and the United States or between Lockheed or Weber and any
8 government contractor(s). In agreeing to this reservation the
9 United States does not admit liability for any such claims and
10 expressly reserves any and all defenses it may have to any such
11 claims. Nothing in this Consent Decree shall be interpreted as
12 waiving, abrogating or resolving any rights or claims which
13 Lockheed or Weber may have against the United States based upon
14 any contract between Lockheed or Weber and the United States or
15 between Lockheed or Weber and any government contractor(s).

16 H. Settling Defendants waive any rights they might other-
17 wise have to initiate a challenge to the amount of stipulated
18 penalties due per type of violation as set out in Subpart D or E
19 of Section XIX (Stipulated Penalties) of this Decree. This
20 waiver does not including a waiver of the right to dispute the
21 underlying technical or schedule issues that may have given rise
22 to the alleged penalties or whether the penalties allegedly due
23 were calculated in the manner provided for in this Decree.

24 I. The Settling Parties recognize that as a result of the
25 withdrawal of groundwater from the San Fernando Valley Basin
26 during the performance of the Remedial Action Work, certain
27 obligations to provide replacement water or to pay money in place

1 of providing such water will arise, pursuant to the final judg-
2 ment entered in The City of Los Angeles v. The City of San Fer-
3 nando, et. al., (Los Angeles Superior Court, Case No C650079,
4 1979). The Settling Parties agree that the City is responsible
5 for meeting any such obligations to provide replacement water or
6 to pay money in place of providing such water which arise under
7 such judgment as a result of performance of the Remedial Action
8 Work except that Lockheed is responsible for meeting any such
9 obligations which arise under such judgment in connection with
10 any water extracted pursuant to this Decree that the City is not
11 required to accept at the Point of Delivery.

12 XVIII. COVENANT NOT TO SUE

13 A. 1. Except as provided in Subparts C, D, E and F of this
14 Section, upon approval by EPA of the Certificate of Completion
15 with respect to the Work pursuant to Subpart A of Section XXXIV
16 (Termination and Satisfaction), the United States covenants not
17 to sue the Settling Work Defendants with regard to Covered Mat-
18 ters. This Section is not, and shall not be construed as, a
19 covenant not to sue either Settling Work Defendant if either or
20 both Settling Work Defendant(s) do(es) not make all payments and
21 perform all Work which Settling Work Defendants are required to
22 make or perform by this Consent Decree. Neither Settling Work
23 Defendant is entitled to a covenant not to sue if the other Set-
24 tling Work Defendant fails to perform its obligations pursuant to
25 this Decree. This covenant not to sue does not apply to any
26 removal or remedial actions taken at the Site beyond those that
27 are included in Covered Matters.